International Seabed Authority ISBA/21/C/8

Council

Distr.: General
2 June 2015

Original: English

Twenty-first session
Kingston, Jamaica
13-24 July 2015

Status of contracts for exploration in the Area

Report of the Secretary-General

1. The present report provides members of the Council with information on the status of contracts for exploration in the Area. Exploration contracts currently pertain to three mineral resources: polymetallic nodules, polymetallic sulphides and cobalt-rich ferromanganese crusts. In addition, the report contains information on the status of implementation of the decision of the Assembly of 25 July 2013 relating to the establishment of overhead charges for the administration and supervision of exploration contracts. The information provided herein is up to date as at 1 June 2015.

I. Status of exploration contracts

2. As at 1 June 2015, 22 contracts for exploration had entered into force (14 for exploration for polymetallic nodules, 5 for exploration for polymetallic sulphides and 3 for exploration for cobalt-rich ferromanganese crusts). A complete list of the contracts, with details of the contractor and the date of entry into force of each contract, is provided in annex I to the present report.

3. Since the twentieth session, five new contracts have been signed. On 18 November 2014, a contract for exploration for polymetallic sulphides with the Institut français de recherche pour l'exploitation de la mer (IFREMER) was signed in Issy-les-Moulineaux, France. A contract for exploration for polymetallic nodules with Marawa Research and Exploration Ltd. was signed in New York on 19 January 2015. A contract for exploration for polymetallic nodules with Ocean Mineral Singapore Pte Ltd. was signed in Kingston on 15 January 2015 and in Singapore on 22 January 2015. On 10 March 2015, the Authority entered into a contract for exploration for cobalt-rich ferromanganese crusts with the Ministry of Natural Resources and Environment of the Russian Federation. The contract for exploration for polymetallic sulphides with the Federal Institute for Geosciences and Natural Resources of Germany was signed in Berlin on 6 May 2015. It is anticipated that the

15-08795 (E) 110615

Please recycle

contract for exploration for polymetallic nodules with UK Seabed Resources Ltd. will be signed prior to the session in July 2015.

4. With regard to the three remaining plans of work for exploration approved by the Council during its twentieth session, it is expected that contracts will be signed with the respective applicants in 2015.

II. Status of consultations regarding the implementation of decision ISBA/19/A/12

5. By its decision of 25 July 2013 (ISBA/19/A/12), the Assembly established an annual overhead charge of $47,000 to cover the costs incurred by the Authority in administering and supervising contracts. The charge is due to be paid by each contractor by 31 March each year. The decision is to be implemented through the addition of two new clauses (sects. 10.5 and 10.6) to the standard clauses for exploration contracts. The decision of the Assembly also specifies the date of its entry into force (25 July 2013) and contains special provisions regarding its effect with regard to existing contracts and pending and approved applications received before 25 July 2013.

A. Applications submitted after 25 July 2013

6. The decision of the Assembly has immediate effect from the date of its adoption (25 July 2013), meaning that standard clauses 10.5 and 10.6 will apply automatically to any contract entered into as a result of an application for approval of a plan of work for exploration submitted after that date.

B. Existing contracts

7. As regards exploration contracts that had already entered into force as at 25 July 2013, the Assembly had requested the Secretary-General to consult each contractor with a view to making revisions to the contracts, in accordance with section 24.2 of the standard clauses, in order to incorporate clauses 10.5 and 10.6. Those consultations are continuing and their status is reflected in annex II to the present report.

C. Applications submitted before 25 July 2013

8. Four of the seven applications approved by the Council in July 2014 were submitted before 25 July 2013. Those were from the Ministry of Natural Resources and Environment of the Russian Federation (received on 6 February 2013), UK Seabed Resources Ltd. (received on 8 February 2013), the Government of India (received on 26 March 2013) and Ocean Mineral Singapore Pte Ltd. (received on 19 April 2013). The Ministry of Natural Resources and Environment of the Russian Federation and Ocean Mineral Singapore Pte Ltd. agreed to include the new standard clauses in their respective contracts, while consultations are under way with UK Seabed Resources Ltd. and the Government of India in that regard. The contracts for exploration with IFREMER (polymetallic sulphides) and Marawa

Research and Exploration Ltd. (polymetallic nodules) (applications submitted on 23 May and 30 May 2012, respectively) also include those clauses.

III. Recommendation

9. The Council is invited to take note of the present report.

Annex I

Status of approved contracts for exploration

A. Contracts for exploration for polymetallic nodules

Contractor	*Date of entry into force*	*Sponsoring State*	*General location of the exploration area*	*Date of expiry*
Interoceanmetal Joint Organization	29 March 2001	Bulgaria, Cuba, Czech Republic, Poland, Russian Federation and Slovakia	Clarion-Clipperton Fracture Zone	28 March 2016
Yuzhmorgeologiya	29 March 2001	Russian Federation	Clarion-Clipperton Fracture Zone	28 March 2016
Government of the Republic of Korea	27 April 2001	–	Clarion-Clipperton Fracture Zone	26 April 2016
China Ocean Mineral Resources Research and Development Association	22 May 2001	China	Clarion-Clipperton Fracture Zone	21 May 2016
Deep Ocean Resources Development Co. Ltd.	20 June 2001	Japan	Clarion-Clipperton Fracture Zone	19 June 2016
Institut français de recherche pour l'exploitation de la mer	20 June 2001	France	Clarion-Clipperton Fracture Zone	19 June 2016
Government of India	25 March 2002	–	Central Indian Ocean Basin	24 March 2017
Federal Institute for Geosciences and Natural Resources of Germany	19 July 2006	Germany	Clarion-Clipperton Fracture Zone	18 July 2021
Nauru Ocean Resources Inc.	22 July 2011	Nauru	Clarion-Clipperton Fracture Zone (reserved area)	21 July 2026
Tonga Offshore Mining Limited	11 January 2012	Tonga	Clarion-Clipperton Fracture Zone (reserved area)	10 January 2027
Global Sea Mineral Resources NV	14 January 2013	Belgium	Clarion-Clipperton Fracture Zone	13 January 2028
UK Seabed Resources Ltd.	8 February 2013	United Kingdom of Great Britain and Northern Ireland	Clarion-Clipperton Fracture Zone	7 February 2028

Contractor	*Date of entry into force*	*Sponsoring State*	*General location of the exploration area*	*Date of expiry*
Marawa Research and Exploration Ltd.	19 January 2015	Kiribati	Clarion-Clipperton Fracture Zone (reserved area)	18 January 2030
Ocean Mineral Singapore Pte Ltd.	Signed in Kingston on 15 January 2015 and in Singapore on 22 January 2015	Singapore	Clarion-Clipperton Fracture Zone (reserved area)	21 January 2030
UK Seabed Resources Ltd.	To be signed	United Kingdom of Great Britain and Northern Ireland	Clarion-Clipperton Fracture Zone	–
Cook Islands Investment Corporation	To be signed	Cook Islands	Clarion-Clipperton Fracture Zone (reserved area)	–

B. Contracts for exploration for polymetallic sulphides

Contractor	*Date of entry into force*	*Sponsoring State*	*General location of the exploration area*	*Date of expiry*
China Ocean Mineral Resources Research and Development Association	18 November 2011	China	South-west Indian Ridge	17 November 2026
Government of the Russian Federation	29 October 2012	–	Mid-Atlantic Ridge	28 October 2027
Government of the Republic of Korea	24 June 2014	–	Central Indian Ocean	23 June 2029
Institut français de recherche pour l'exploitation de la mer	18 November 2014	France	Mid-Atlantic Ridge	17 November 2029
Government of India	To be signed	–	Indian Ocean Ridge	–
Federal Institute for Geosciences and Natural Resources of Germany	6 May 2015	Germany	Central Indian Ridge and South-east Indian Ridge	5 May 2030

C. Contracts for exploration for cobalt-rich ferromanganese crusts

Contractors	*Date of entry into force*	*Sponsoring State or States*	*General location of the exploration area*	*Date of expiry*
Japan Oil, Gas and Metals National Corporation	27 January 2014	Japan	Western Pacific Ocean	26 January 2029
China Ocean Mineral Resources Research and Development Association	29 April 2014	China	Western Pacific Ocean	28 April 2029
Ministry of Natural Resources and Environment of the Russian Federation	10 March 2015	–	Magellan Mountains in the Pacific Ocean	9 March 2030
Companhia de Pesquisa de Recursos Minerais S.A.	To be signed	Brazil	Rio Grande Rise in the South Atlantic Ocean	–

Annex II

Status of consultations with regard to the revision of exploration contracts existing as at 25 July 2013

Contractor	*Status*
Government of the Russian Federation (sulphides)	Under consideration
China Ocean Mineral Resources Research and Development Association (sulphides)	Under consideration
Tonga Offshore Mining Limited	Accepted on 18 February 2014
Nauru Ocean Resources Inc.	Accepted subject to formal confirmation
Institut français de recherche pour l'exploitation de la mer (nodules)	Under consideration
Global Sea Mineral Resources NV	Accepted on 19 December 2013
China Ocean Mineral Resources Research and Development Association (nodules)	Under consideration
Yuzhmorgeologiya	Under consideration
Government of India	Under consideration
Government of the Republic of Korea	Accepted on 17 June 2014
Federal Institute for Geosciences and Natural Resources of Germany	Accepted on 21 March 2014
Deep Ocean Resources Development Ltd.	Accepted on 9 January 2014
Interoceanmetal Joint Organization	Accepted on 28 April 2015
UK Seabed Resources Ltd.	Fee paid for 2014 and 2015

International Seabed Authority ISBA/21/C/9

Council

Distr.: General
3 June 2015

Original: English

Twenty-first session
Kingston, Jamaica
13-24 July 2015

Consultations with the OSPAR Commission for the Protection of the Marine Environment of the North-East Atlantic

Report of the Secretary-General

1. During the twentieth session, the Council of the International Seabed Authority considered a joint proposal by Germany and the United Kingdom of Great Britain and Northern Ireland on the current status of the collective arrangement between competent international organizations on cooperation and coordination regarding selected areas beyond national jurisdiction in the North-East Atlantic (ISBA/20/C/15). Members of the Council were of different views as regards the secretariat of the Authority joining the collective arrangement and did not make a decision on the matter. At the same time, the Council requested the secretariat of the Authority to hold consultations with the secretariat of the OSPAR Commission for the Protection of the Marine Environment of the North-East Atlantic, with a view to reporting to the Council on the matter at the present session (ISBA/20/C/32, para. 27).

2. In response to that request, the present report has been prepared to reflect on those exchanges at the secretariat level since the previous session of the Authority.

3. The North-East Atlantic Fisheries Commission (NEAFC)[1] and the OSPAR Commission invited the secretariat of the Authority to share inputs from the point of view of the Authority at the first meeting under the collective arrangement, which was held in London on 27 and 28 April 2015. The secretariat of the Authority was able to participate by teleconference in part of the meeting on 27 April 2015. The mandate of the Authority was recalled, including its exclusive competence to adopt environmental management measures such as regional environmental management

[1] The OSPAR Commission and NEAFC, a regional fishery management organization established by the Convention on Future Multilateral Cooperation in the North-East Atlantic Fisheries of 1980, signed a memorandum of understanding in August and September 2008. Denmark (in respect of the Faroe Islands and Greenland), Iceland, Norway, the Russian Federation and the European Union are members of NEAFC. They are also members of the Authority.

Please recycle

plans for areas where the Authority had issued exploration contracts in application of the ecosystem and precautionary approaches. Participants in the meeting were also informed that the Authority had issued two contracts for exploration for polymetallic sulphides on the Mid-Atlantic Ridge, south of the Azores, and that the Council of the Authority, as well as the General Assembly of the United Nations, had identified the development of a regional environmental management plan in the Mid-Atlantic Ridge as a priority activity for the Authority. In that respect, preliminary discussions regarding the possible development of an environmental management plan for the Mid-Atlantic Ridge were also held in official meetings attended by both secretariats.

4. Participants in the first meeting were also informed that NEAFC and the OSPAR Commission had joined the collective arrangement in 2014. Joining the collective arrangement was also under consideration within the International Maritime Organization. During the first meeting under the collective arrangement, it was also noted that it would be appropriate to approach the International Commission for the Conservation of Atlantic Tunas to discuss the relevance of the collective arrangement.

5. During the first meeting, it was also recalled that the collective arrangement, which is a non-binding instrument, was intended to serve as a platform to facilitate dialogue and the exchange of information. The arrangement provides a framework for cooperation between competent sectoral organizations regarding selected areas beyond national jurisdiction in the North-East Atlantic that are subject to specific environmental management measures. Participants in the meeting presented the measures they had taken. The full report of the first meeting under the collective arrangement is reproduced in the annex to the present report.

6. The Council is invited to take note of the consultations over the reporting period between the secretariats of the Authority and the OSPAR Commission and to provide such direction as may be deemed appropriate.

Annex

Aide-mémoire of the first meeting under the collective arrangement

Agenda item 1 and overview of initial discussions

1. The first meeting under the collective arrangement was held on 27 and 28 April 2015, in London, and hosted by the secretariats of the North-East Atlantic Fisheries Commission (NEAFC) and the OSPAR Commission for the Protection of the Marine Environment of the North-East Atlantic.

2. The meeting was attended by the President of NEAFC, the Chair of OSPAR, the Chair of the OSPAR Biodiversity Committee, a representative of Norway to NEAFC and the secretariats of the two organizations. The secretariat of the International Seabed Authority joined the meeting remotely to contribute to the discussions under agenda item 2. Representatives of the secretariat of the Convention for Cooperation in the Protection and Development of the Marine and Coastal Environment of the West and Central African Region and of the Canary Current Large Marine Ecosystem Project participated in the meeting as observers. This was as part of an ongoing initiative by Norway to facilitate the sharing of experiences between the North-East Atlantic and South-East Atlantic on improving governance of the oceans.

3. Presentations were made on the aims and objectives of NEAFC and OSPAR and on the background to the collective arrangement.

4. It was clarified that NEAFC had agreed specific closed areas both within and outside of existing bottom fishing areas, In addition, outside of existing bottom fishing areas, there were requirements in place for assessment prior to exploratory fishing and a formal decision by the NEAFC Commission was required for exploratory fisheries in those areas to proceed. In effect, those areas are therefore not open, unless NEAFC decides otherwise.

5. The participants considered that it would be useful to have a joint discussion on how various terms and principles were expressed in their two organizations, so as to ensure that the language used was intelligible to each other, for example, the detailed understanding of the ecosystem approach.

6. With regard to "sunset clauses", NEAFC explained there were explicit sunset clauses for its closed areas to ensure periodic reviews on the basis of the latest evidence. Similarly, OSPAR could decide to change any area that it had designated as a marine protected area if it felt that the relevant circumstances had changed. Any measure taken within such organizations should be considered according to the best available evidence and it would be appropriate to react on the basis of such evidence. Consequently, no measure could be considered permanent.

7. Participants noted the usefulness of mixing sectoral perspectives with more integrative considerations, looking both at the breadth of human activities and their interactions within the ecosystem, including cumulative effects.

8. They also noted that developing a functioning dialogue between the two organizations and other competent international organizations with international legal competence for managing human activities in areas beyond national

jurisdiction would be useful in demonstrating the value of a regional approach, where such competent organizations existed, highlighting where there were shared objectives for the sustainable use of the oceans.

9. Participants shared the view that the contracting parties should be encouraged to support the collective arrangement in discussions at the International Seabed Authority and the International Maritime Organization (IMO).

Agenda item 2: Collective arrangement

10. The following points were noted in consideration of the type of information appropriate for the inclusion in annexes 1 and 2 to the collective arrangement and the time frame for submitting that information.

(a) Submission of information for annex 1 on "selected areas"

11. Participants agreed that both contextual information and the detail of the selected areas would be useful to include, such as the objectives for the areas, the species protected therein, and so on. Links to the source of the information would also be useful (e.g., to the agreed text of any measures provided as background documentation).

12. Initial papers were presented by both NEAFC and OSPAR as possible bases for the type of information to be provided.

(b) Submission of information for annex 2 on the listing of memorandums of understanding and bilateral agreements

13. Participants agreed that there should be three parts to annex 2 and that this would include the title and the dates agreed for memorandums of understanding or bilateral agreements (see annex 1):

(a) Between OSPAR and NEAFC (with the intention that this would be expanded to incorporate bilateral arrangements between any other organizations that may adopt the collective arrangement in the future);

(b) Between NEAFC and other regional or global organizations of relevance to the subjects covered by the discussions on the collective arrangement;

(c) Between OSPAR and other regional or global organizations of relevance to the subjects covered by the discussions on the collective arrangement.

(c) Finalization and submission of the annexes

14. Both organizations would aim to finish their internal processes to endorse the texts for the annexes by 3 July 2015. Such "approval" by OSPAR or NEAFC would only be of their own annex texts and not of each other's texts.

15. The source of information used to populate the annexes should be made clear so that readers might find the original sources easily.

(d) Expansion of the collective to include other competent organizations and reflections from observing competent organizations

16. It was the intention that the collective arrangement should be expanded to include other competent international organizations. The collective arrangement had

been tabled for consideration by France and Norway to the IMO Marine Environment Protection Committee in late 2014. It was not discussed owing to the lack of time but was forwarded for consideration at the meeting in May 2015. The Authority had considered the collective arrangement, first in 2012 and again in 2014 (tabled by Germany and the United Kingdom of Great Britain and Northern Ireland). Following the meeting of the Council in 2014, the secretariat of the Authority had been mandated to liaise with the secretariats of OSPAR and NEAFC to prepare for further discussion on the agenda in 2015. It was considered that it would be appropriate to approach the International Commission for the Conservation of Atlantic Tunas to discuss the relevance of the collective arrangement.

17. The secretariat of the Authority provided the participants with further information on the global perspective of the Authority. It expressed the need to demonstrate the benefit of the collective arrangement over and above a memorandum of understanding, particularly in relation to a key issue on the agenda of the Authority and for which there was some pressure to progress, namely, the development of an environmental management plan for the Mid-Atlantic Ridge. The secretariat of the Authority would be preparing papers for the 2015 meeting of the Council before the end of May 2015.

Agenda items 3 and 4: Identification of issues for the attention of OSPAR and NEAFC

18. Using the framework provided by the text of the collective arrangement, in particular paragraph 6 (a) to (f), the participants considered the types of questions that could be relevant to bring to the attention of each of the two organizations.

(a) Use of scientific advice and the International Council for the Exploration of the Sea

19. The advice of the International Council for the Exploration of the Sea (ICES) was sought by both organizations and provided an option for an agreed common basis. NEAFC depended upon ICES as its scientific advisory body. An important point to keep in mind was that that information was used "as is" by NEAFC. OSPAR also used ICES information, but not necessarily as the only source of information, and it might use additional or alternative sources of scientific information.

20. Nevertheless the participants concurred that there could be an opportunity to better coordinate certain requests to ICES for analysis in order to save resources and obtain commonly requested advice for consideration by those organizations. Nevertheless, this would not preclude subsequent independent consideration or interpretation.

(b) Information on science and on proposed human uses (para. 6 (a) and (b) of the collective arrangement)

21. Participants determined that an ad hoc approach to formal notifications on updates to paragraphs 6 (a) and (b) between OSPAR and NEAFC would be appropriate. Relevant agreements and actions that arose should be notified. Participants in the following meeting under the collective arrangement could then

note any last minute updates and have an opportunity to review and discuss the updated information.

22. NEAFC would consider the sorts of issues to raise that OSPAR could provide information or take appropriate action on to assist NEAFC in its objectives. Such issues could be related to contamination, pollution, marine debris or litter and other human impacts on the marine environment under the remit of OSPAR.

23. OSPAR would in turn consider the sorts of issues to raise that NEAFC could provide information on or take appropriate action on to assist OSPAR in its objectives. Such issues could be related to vulnerable marine ecosystems, reacting to information on the impact of fisheries on the environment, or species and habitats of mutual concern.

(c) Cooperation on environmental impact assessments (para. 6 (c))

24. Where environmental impact assessments or strategic environmental impact assessments provided information on relevant areas, the types of activities undertaken and background information should be shared. However, at that stage, the exact details of what was likely to be done were not clear.

25. A proposed exploratory fishery at NEAFC might offer opportunities to learn what would be feasible under paragraph 6 (c).

26. From the OSPAR perspective, relevant information could come from the implementation of OSPAR recommendation 2010/5 on the assessment of environmental impacts on threatened and/or declining species.

27. The participants stated that it would be beneficial to prepare a joint request for any such information pertaining to any area covered under annex 1 from other relevant organizations, including the Authority and IMO, as input to future meetings under the collective arrangement in 2016.

(d) Consulting on respective objectives (para. 6 (d))

28. The participants considered that informal discussions and exchange were particularly useful to help to build mutual understanding. This could then help to feed back into each organization's thinking and development within other specific or related work areas potentially resulting in improved coordination and coherence.

29. The participants noted the need to better inform one another on their respective lists of species and habitats under particular protection measures. That exchange of information should be carried out as the measures arose on either side.

(e) Exchange of data (para. 6 (e))

30. As an example, the participants shared information on how data from the vessel monitoring system and log books provided important contributions to the work of the two organizations. However, it was considered that there might be reasons to leave arrangements as they currently were with regard to how vessel monitoring data were provided to ICES for analysis; namely, by national submission in response to a data call, or through NEAFC.

31. In future, as electronic reporting systems developed, there might be opportunities for better cooperation on information requirements on broader issues,

such as incidental catch or non-target species, or encounters with vulnerable marine ecosystems, or even information other than that which NEAFC currently requested its contracting parties to keep a record of, which could be of significant value to the work of OSPAR. There was, however, no further elaboration on that subject at that time, or on the routes to provide such data to analysts (e.g., ICES), such as through NEAFC or through the contracting parties directly.

(f) Superjacent areas (para. 6 (f))

32. This item was noted and there was no further discussion.

Agenda item 5: Future meetings and possible issues that could be considered

33. The participants agreed that it would be beneficial to continue to meet under the collective arrangement and to develop the format of a forum for dialogue between the participants of the collective arrangement, or "Collective arrangement dialogue meeting", while also recognizing the need for a process to allow for formal notification between the organizations.

34. It would be important to engage the contracting parties in future meetings under the collective arrangement.

35. Issues that could be considered within the discussion under the next collective arrangement included:

(a) Further explanation of the process regarding proposals for exploratory fishing in areas outside of exiting bottom fishing areas;

(b) Sharing information to better understand how the organizations developed the evidence to support policy discussions;

(c) Inviting IMO, the Authority and other relevant organizations to speak on their activities, management measures, impacts and approaches in the selected areas covered under annex 1.

36. The next meeting could consist of the following components:

(a) A special session or seminar to be organized by a host country on a theme to be proposed by the host country and agreed by the organizations (participation to be decided);

(b) A session between the organizations of the collective arrangement (and their contracting parties) that would include:

(i) Consideration of formal notifications and updates;

(ii) Comment on issues related to the areas covered under annex 1 (para. 2 of the collective arrangement);

(iii) A continued dialogue (guided by para. 6 of the collective arrangement);

(c) A case study presented by the host country on its experience with regard to cross-sectoral integration.

37. Both organizations agreed to provide firmer proposals on dates and hosting arrangements for the next meeting in 2016, with a proposal for Svalbard as the venue, before mid-2016.

Agenda item 6: Communication

38. The secretariats would continue to coordinate on issues related to communication both between the two organizations and in respect of others on matters relating to the implementation of the collective arrangement.

39. Formal notifications concerning the collective arrangement would be sent from the President or Chair on behalf of the respective organization.

Agenda item 7: Reporting

40. The present aide-mémoire served as a report of the meeting.

Agenda item 8: Any other business

41. There was no other business.

International Seabed Authority ISBA/21/C/10

Council

Distr.: General
3 June 2015

Original: English

Twenty-first session
Kingston, Jamaica
13-24 July 2015

Agreement of cooperation between the International Maritime Organization and the International Seabed Authority

Note by the Secretary-General

I. Introduction

1. By virtue of article 169, paragraph 1, of the United Nations Convention on the Law of the Sea of 10 December 1982, the Secretary-General of the International Seabed Authority shall, on matters within the competence of the Authority, make suitable arrangements for consultation and cooperation with international and non-governmental organizations recognized by the Economic Social Council of the United Nations. Such arrangements require the approval of the Council. Organizations with which the Secretary-General has entered into an arrangement are permitted to designate representatives to attend meetings of the organs of the Authority as observers in accordance with the rules of procedures of those organs. Written reports of the organizations on subjects related to the work of the Authority and in which they have special competence may be distributed to States parties by the Secretary-General.

II. Agreement of cooperation between the Authority and the International Maritime Organization

2. The International Maritime Organization (IMO) is a specialized agency of the United Nations responsible for measures to improve the safety and security of international shipping and to prevent pollution from ships. It is also involved in legal matters, including liability and compensation issues and the facilitation of international maritime traffic. IMO was established by means of the Convention on the International Maritime Organization, adopted under the auspices of the United Nations in Geneva on 6 March 1948, and met for the first time in January 1959. It currently has 171 member States and three associate members.

15-08880 (E) 160615

Please recycle

3. By virtue of rule 82 (d) of the rules of procedure of the Assembly, IMO is an observer in the Assembly of the Authority and may participate in the deliberations of the Assembly upon the invitation of the President on questions within the scope of its competence. By extension, pursuant to rule 75 of the rules of procedure of the Council of the Authority, IMO may, upon invitation of the Council, designate a representative to participate in the deliberations of the Council, without the right to vote, on questions affecting it or the scope of its activities. The right to, among other things, participate in or consult the Council does not extend to subsidiary organs (as in the case of the Assembly) or to the secretariat, hence the need for an agreement of cooperation.

4. Following the twentieth session of the Authority, the secretariat of the Authority and the IMO secretariat entered into consultations on the modalities for future cooperation between the two organizations. As the Authority embarks on the formulation of a regulatory framework for the exploitation of deep-sea minerals in the Area, technical expertise, advice and assistance from relevant United Nations organizations, bodies and specialized agencies such as IMO will be necessary. The first consultation between IMO and the Authority took place on the margins of the thirty-sixth Consultative Meeting of Contracting Parties to the Convention on the Prevention of Marine Pollution by Dumping of Wastes and Other Matter and the ninth Meeting of Contracting Parties to the 1996 Protocol thereto, held in London in November 2014. The second consultation took place on the margins of the fourteenth meeting of UN-Oceans, held in London in March 2015.

5. On 27 April 2015, the Secretary-General of the Authority wrote to the Secretary-General of IMO informing him, inter alia, of the ongoing discussions between the secretariats of the two organizations regarding the possibility of the establishment of an agreement of cooperation between IMO and the Authority. In his letter, the Secretary-General highlighted that the Authority was working towards the formulation of a regulatory framework for the exploitation of seabed resources in the Area and that closer collaboration between the two organizations in fields of common interest would be valuable.

6. On 6 May 2015, the Secretary-General of IMO responded that IMO was ready to assist once the formalities to establish the agreement of cooperation were completed and that, in accordance with IMO rules, any signature of cooperation by IMO required the approval of the Council of IMO and, subsequently, of its Assembly. He confirmed that the draft agreement between the Authority and IMO would be submitted to the Council of IMO at its 114th session, to be held in London from 29 June to 4 July 2015.

7. The proposed agreement of cooperation, as drafted jointly by the secretariats of IMO and the Authority, is contained in the annex to the present document. The draft follows the pattern of similar agreements previously concluded between IMO and interested entities, and is submitted for consideration by the Council, in accordance with article 169 of the United Nations Convention on the Law of the Sea.

III. Action by the Council

8. The Council is invited to take note of the present document and approve the agreement of cooperation between the Authority and IMO.

Annex

Draft agreement of cooperation between the International Maritime Organization and the International Seabed Authority

1. The International Maritime Organization (hereinafter referred to as "IMO") and the International Seabed Authority (ISA) (hereinafter referred to as "ISA") will consult each other on matters of common interest to both with a view to ensuring maximum coordination of the work and activities of their respective organizations in respect of such matters.

2. Subject to such arrangements as may be necessary for safeguarding confidential information, the Secretary-General of IMO and the Secretary-General of ISA will exchange information and keep each other informed of projected activities and programmes of work in fields of common interest. Accordingly, when either entity proposes to initiate a programme or activity on a subject in which the other has or may have a substantial interest, consultation will be initiated between the two, with a view to harmonizing their efforts as far as possible, taking into account their respective responsibilities and any decisions or wishes of the appropriate governing bodies of the respective entities.

3. The Secretary-General of IMO will invite the Secretary-General of ISA to send representatives to observe meetings or conferences convened by or under the auspices of IMO to consider matters in which ISA has an interest, in accordance with procedures applicable to each meeting or conference. Conversely, the Secretary-General of ISA will invite the Secretary-General of IMO to send observers to meetings or conferences convened by or under the auspices of ISA to consider matters in which IMO has an interest, in accordance with the procedures applicable to each meeting or conference.

4. The Secretary-General of IMO and the Secretary-General of ISA may consult on matters of personnel, material, services, equipment and facilities for joint undertakings which may be agreed between them in fields of common interest to IMO and ISA.

5. IMO will, at the request of ISA, render assistance to ISA with respect to matters within the scope of activities of ISA; and ISA will, at the request of IMO, render assistance to IMO in matters falling within the scope of IMO's activities. Where assistance, which is required by either party under the terms of this Agreement, involves substantial expenditure, consultations will take place with a view to determining the most equitable manner for meeting such expenditure.

6. It is further agreed that nothing in this Agreement shall bind any of the Member States of ISA jointly or severally. Similarly, the Agreement shall not bind any of the Member States of IMO jointly or severally.

7. This Agreement shall be subject to revision by agreement between the Secretary General of IMO and the Secretary-General of ISA.

8. The Secretary-General of IMO and the Secretary-General of ISA may terminate this Agreement by giving six months' written notice to the other party.

9. This Agreement shall come into force on its approval by the Assembly of IMO and the Council of ISA, whichever is the later.

Agreed for ISA by:	Agreed for IMO by:
[Name of the Secretary-General] Secretary-General	[Name of the Secretary-General] Secretary-General
Date:	Date: .....

International Seabed Authority ISBA/21/C/11

Council

Distr.: General
4 June 2015

Original: English

Twenty-first session
Kingston, Jamaica
13-24 July 2015

Memorandum of understanding between the International Seabed Authority and the Pacific Community

Note by the Secretary-General

I. Introduction

1. By virtue of article 169, paragraph 1, of the United Nations Convention on the Law of the Sea, the Secretary-General of the International Seabed Authority shall, on matters within the competence of the Authority, make suitable arrangements for consultation and cooperation with international and non-governmental organizations recognized by the Economic and Social Council of the United Nations. Such arrangements require the approval of the Council of the Authority. Any organization with which the Secretary-General has entered into an arrangement may designate representatives to attend meetings of the organs of the Authority as observers in accordance with the rules of procedure of these organs. The Secretary-General may distribute to States parties written reports submitted by such organizations on subjects related to the work of the Authority and in which they have special competence.

II. Cooperation between the Authority and the Pacific Community

2. On 26 May 2015, the Director General of the Pacific Community wrote to the Secretary-General of the Authority, inviting the Authority to formalize its relationship with the Pacific Community by means of a memorandum of understanding with the aim of:

(a) Promoting the development of regional and national regulatory frameworks that support the interests of Pacific island States and their efforts to regulate and manage activities undertaken under their effective control in the Area;

(b) Promoting marine scientific research, including by publishing and disseminating research and the results of analysis for the mutual benefit of the member States of the Authority and the Pacific Community;

15-08884 (E) 170615

Please recycle

(c) Promoting capacity-building and information-sharing in the light of the relevant provisions of the Convention and, more specifically, with regard to marine scientific research (art. 143), the transfer of technology (art. 144, and section 5 of the annex to the Agreement relating to the implementation of Part XI of the Convention), the participation of developing States in activities in the Area (art. 148), policies relating to activities in the Area (art. 150) and economic assistance towards developing countries (section 7 of the annex to the Agreement).

3. The South Pacific Commission, as the Pacific Community was formerly called, was founded in 1947 under the Canberra Agreement by the six participating Governments that then administered territories in the Pacific: Australia, France, Netherlands, New Zealand, United Kingdom of Great Britain and Northern Ireland and United States of America. The organization was established to restore stability to a region that had experienced the turbulence of the Second World War, to assist in administering their dependent territories and to benefit the people of the Pacific. The name "South Pacific Commission" was changed to "Pacific Community" at the fiftieth anniversary conference, in 1997, to reflect the organization's Pacific-wide membership (while retaining the acronym "SPC"). Currently, the Pacific Community counts 26 member States and territories; 17 of the member States are also members of the Authority, namely: Australia, Cook Islands, Fiji, France, Kiribati, Marshall Islands, Micronesia (Federated States of), Nauru, New Zealand, Niue, Palau, Papua New Guinea, Samoa, Solomon Islands, Tonga, Tuvalu and Vanuatu.

4. The relationship between the Authority and the Pacific Community draws on the long-standing relationship established with what was, at the time, the Pacific Islands Applied Geoscience Commission, which was granted observer status with the Authority in March 1997. On that basis, it co-hosted a workshop in Fiji with the Authority in 2003. When the Applied Geoscience Commission merged with the Pacific Community in January 2011 and became its Geoscience Division, the Authority, in collaboration with the Pacific Community through the Pacific Community-European Union Deep Sea Minerals Project and the Government of Fiji, organized a second workshop in Fiji, in 2011. It is worth noting that a former Director of the Applied Geoscience Commission, Alfred Simpson, was a member and former Chair of the Legal and Technical Commission of the Authority, and the former Director of the Geoscience Division of the Pacific Community, Russell Howorth, is a current member and former Chair of the Legal and Technical Commission. During the current session, the Assembly will be invited to take note of the institutional transition of the Applied Geoscience Commission to the Pacific Community and to recognize formally the observer status of the Pacific Community under rule 82, paragraph 1 (d), of the rules of procedure of the Assembly of the Authority.

5. The partnership and collaboration between the Authority and the Pacific Community over the years have been very successful, and many Pacific island States have benefited as a result. In fact, since the 2011 workshop, the relationship between the two organizations has steadily been reinforced, including by the participation of Pacific island nationals, sponsored by the Deep Sea Minerals Project, in the Authority's internship programme.

6. The proposed memorandum of understanding, as drafted and agreed to by the secretariats of the Authority and the Pacific Community, is annexed to the present document and submitted for consideration by the Council of the Authority, in accordance with article 169 of the Convention.

III. Actions by the Council

7. The Council is invited to take note of the present document and to approve the proposed memorandum of understanding between the Authority and the Pacific Community.

Annex

Memorandum of understanding between the Pacific Community and the International Seabed Authority

The purpose of the present memorandum of understanding is to specify the scope of cooperation between the Pacific Community and the International Seabed Authority (hereinafter referred to as "the Authority") in promoting the development of regional and national regulatory frameworks that support the interests of member States of the Pacific Community and their efforts to regulate and manage activities undertaken under their control in the international seabed area (hereinafter referred to as "the Area"); in conducting marine scientific research, including publishing and disseminating research and the results of analysis for the mutual benefit of member States; and in participating in capacity-building initiatives and sharing relevant information on seabed resources, in the light of the relevant provisions of the United Nations Convention on the Law of the Sea of 10 December 1982 (hereinafter referred to as "the Convention"), notably articles 143, 144, 148 and 150, as well as sections 5 and 7 of the annex to the Agreement relating to the implementation of Part XI of the Convention, adopted on 28 July 1994 by the General Assembly of the United Nations in its resolution 48/263, hereinafter referred to as "the 1994 Agreement").

Whereas

The Pacific Community, since its establishment in 1947, has been committed to supporting and strengthening the economic and social welfare of the people of the Pacific region and contributing to ensuring that the special interests and needs of Pacific island developing States are taken into consideration, a commitment that is also required by the Convention, notably its article 148,

The Pacific Community, with due regard for the sovereignty of all of its member States, seeks, where appropriate, to cooperate with such competent agencies as regional organizations serving the Pacific region and other international organizations and bodies, with the aim of promoting the peaceful uses of the seas and oceans, the equitable and efficient utilization of their resources, the conservation of their living resources and the study, protection and preservation of the marine environment,

The Pacific Community is mandated by its members to provide for and facilitate research in technical, scientific, economic, environmental and social fields and to ensure the maximum cooperation among research bodies,

The Pacific Community, in fulfilling its obligations, provides technical assistance, advice and information to its member States to support informed decision-making processes and the application of the best international practices for sustainable development and the management of their natural resources, including deep seabed minerals that occur in areas within national jurisdictions and in the Area,

The Pacific Community provides assistance to Pacific island States for the development and implementation of relevant regulatory frameworks that cover activities undertaken in areas within national jurisdictions and under their effective control in the Area, with a view to ensuring that any such activities are conducted in accordance with international law,

The Authority is the competent organization through which States parties to the Convention shall, in accordance with Part XI of the Convention and with the 1994 Agreement, organize and control activities in the Area, particularly with a view to administering the mineral resources of the Area, as defined in article 1, paragraph 1 (1), of the Convention,

The Authority promotes and encourages the conduct of marine scientific research with respect to activities in the Area and the collection and dissemination of the results of such research and analysis, when available, with particular emphasis on research relating to the environmental impact of activities in the Area, in accordance with article 143 of the Convention and section 1, paragraph 5 (h), of the 1994 Agreement,

The Authority is competent to take the necessary measures to ensure the effective protection of the marine environment from harmful effects that may arise from activities in the Area, as set out in article 145 of the Convention and section 1, paragraph 5 (g), of the 1994 Agreement,

The Authority seeks consultation and cooperation with, inter alia, international organizations on matters within the competence of the Authority,

The Pacific Community has 26 members, 17 of which are also members of the Authority, namely: Australia, Cook Islands, Fiji, France, Kiribati, Marshall Islands, Micronesia (Federated States of), Nauru, New Zealand, Niue, Palau, Papua New Guinea, Samoa, Solomon Islands, Tonga, Tuvalu and Vanuatu,

The Pacific Community and the Authority both have a strong interest in the proper regulation and sustainable development of mineral resources in the Area and in the protection of the marine environment, including that of vulnerable deep sea ecosystems in the Area that are associated with some mineral resources, as well as in addressing the particular needs of developing States with regard to the equitable and efficient utilization of their resources, and have taken initiatives at a regional scale in that respect,

Increased cooperation between the Pacific Community and the Authority will help to ensure the appropriate cooperation and coordination of measures that encourage and support sustainable, strong, efficient and transparent regulation and management of activities undertaken under the effective control of the Pacific island States in the Area,

Consultation will help to guarantee that such activities are undertaken with due regard to the rights and duties of Pacific island States and the Authority, as set out in the Convention and the 1994 Agreement.

The Pacific Community and the Authority have decided:

(a) To work in close cooperation, where appropriate and practical, to promote the development of regional and national regulatory frameworks, encompassing both policy and legislation, that support the interests of Pacific island States and member States of the Pacific Community and the Authority and their efforts to regulate and manage activities undertaken under their effective control in the Area;

(b) To consult, where appropriate and practical, on issues of mutual interest in the field of marine scientific research, related services and capacity-building, with a view to promoting or enhancing a better understanding of activities in the Area;

(c) To work in close cooperation, where appropriate and practical, in the field of ocean surveys, particularly in the collection of geological and environmental data and information, as well as for the promotion of international technical and scientific cooperation;

(d) To invite each other's representatives to attend and participate in the meetings of their respective governing bodies as observers, in accordance with the rules of procedure of such bodies;

(e) To exchange data and information, as appropriate, on matters of mutual interest;

(f) To conduct, where appropriate, cooperative studies and seminars;

(g) That the present memorandum of understanding is without prejudice to agreements concluded by either party with other organizations or programmes;

(h) That the cooperation between the two organizations referred to herein is subject to the requirement of confidentiality of data and information imposed upon the Pacific Community by the agreements concluded with its member States and upon the Authority by the Convention in respect of data and information submitted to it by applicants and contractors relating to the exploration of resources of the Area;

(i) That nothing in or relating to the present memorandum of understanding shall be deemed to be a waiver, express or implied, of any of the privileges or immunities of the Authority and the Pacific Community;

(j) That the present memorandum of understanding will come into effect upon its signature by the Director General of the Pacific Community and the Secretary-General of the Authority, or by persons duly authorized by them. It may be terminated by any of the parties by giving to the other a written notice six months prior to the proposed date of termination.

IN WITNESS WHEREOF, the undersigned have signed the present memorandum of understanding in duplicate.

For the secretariat of the Pacific Community:	For the International Seabed Authority:
Colin Tukuitonga Director General	Nii Allotey Odunton Secretary-General
Date:_____	Date:_____

International Seabed Authority ISBA/21/C/12

Council

Distr.: General
4 June 2015

Original: English

Twenty-first session
Kingston, Jamaica
13-24 July 2015

Election to fill a vacancy on the Legal and Technical Commission in accordance with article 163, paragraph 7, of the United Nations Convention on the Law of the Sea of 10 December 1982

Note by the Secretary-General

1. The Council of the International Seabed Authority is invited to note that Nobuyuki Okamoto (Japan), member of the Legal and Technical Commission, resigned on 1 June 2015. Mr. Okamoto had been re-elected as a member of the Commission on 21 July 2011 (see ISBA/17/C/21, para. 18), for a term of five years beginning 1 January 2012.

2. In accordance with article 163, paragraph 7, of the United Nations Convention on the Law of the Sea of 10 December 1982 and rule 80, paragraph 3, of the rules of procedure of the Council, in the event of the death, incapacity or resignation of a member of the Commission prior to the expiration of the term of office, the Council shall elect for the remainder of the term a member from the same geographical region or area of interest.

3. Article 163, paragraph 3, of the Convention and rule 81 of the rules of procedure of the Council provide that members of the Commission shall have appropriate qualifications in the area of competence of the Commission and that States parties shall nominate candidates of the highest standards of competence and integrity with qualifications in relevant fields so as to ensure the effective exercise of the functions of the Commission.

4. By a note verbale dated 1 June 2015, the Permanent Representative of Japan to the Authority informed the secretariat of the nomination of the Deputy Director General of the Metals Mining Technology Development Department of Japan Oil, Gas and Metals National Corporation, Natsumi Kamiya, as a candidate to fill the vacant seat on the Commission. The curriculum vitae of Mr. Kamiya is contained in the annex to the present note.

15-09005 (E) 150615

Please recycle

Annex

Curriculum vitae of Natsumi Kamiya (Japan)*

Personal data

Year and place of birth: 1955, Tokyo

Languages: Japanese (mother tongue), English, French and Spanish

Current position

Deputy Director General, Metals Mining Technology Development Department, Japan Oil, Gas and Metals National Corporation (www.jogmec.go.jp/english/)

Education history

Bachelor of engineering, School of Resources Engineering, Faculty of Science and Technology, Waseda University (Tokyo) (1978)

Master of engineering, Faculty of Science and Technology, Waseda University (Tokyo) (1980)

Career history

Mr. Kamiya joined Metal Mining Agency of Japan (integrated into Japan Oil, Gas and Metals National Corporation in 2004) in 1980, after completion of his master degree in the field of metallurgical process engineering. Since then, he has been working in various fields of the metallurgical and mining industry. His experience encompasses mining technology innovation, technical cooperation with developing countries, the management of the rehabilitation of abandoned mine sites, and the development of the exploration for and environmental assessment of deep-sea mineral resources. He was involved in exploration (1984-1987) and environmental assessment (1992-1994) projects related to polymetallic nodules. He was also involved in international technology cooperation projects through assignments under the Overseas Economic Cooperation Fund and the New Energy and Industry Technology Development Organization. He has extensive experience in minerals economics research, particularly on the global mining industry, metals market and business strategy, through his 10-year overseas assignments in the United Kingdom of Great Britain and Northern Ireland, Australia and Chile. He is currently head of deep-sea mineral resources projects.

Home office assignment

October 2013-present: Deputy Director General, Metals Mining Technology Department (Deep-Sea Minerals Projects), Japan Oil, Gas and Metals National Corporation

* Curricula vitae are issued without formal editing.

March 2006-September 2010: Deputy Director General, Metals Strategy Department (mineral economics and business strategy)

June 1991-January 1994: Deputy Director, Technical Development Division, Mine Pollution Control Development Department (Environment impact assessment of deep-sea mineral resources development)

January 1987-June 1989: Deputy Director, Survey Division, Overseas Survey Department (technical cooperation with developing countries)

January 1984-January 1987: Manager, Technical Development Division, Geological Survey Department, Metal Mining Agency of Japan, (exploration for polymetallic nodules and research on other types of deep-sea mineral resources)

April 1980-September 1982: Manager, Regional Geological Survey Division, Survey Department (exploration for metallic resources in Japan)

Overseas assignment

September 2010-September 2013: General Manager, Santiago Office (Chile), Japan Oil, Gas and Metals National Corporation

March 2001-March 2005: General Manager, Canberra Office (Australia), Metal Mining Agency of Japan/Japan Oil, Gas and Metals National Corporation

April 1996-April 1999: General Manager, London Office (United Kingdom), Metal Mining Agency of Japan

Other organizations

January 1994-March 1996: Deputy Director, International Technology Cooperation Division, International Technology Cooperation Department, New Energy and Industrial Technology Development Organization

January 1989-June 1991: Deputy Director, Second Technical Appraisal Division (Mining and Industry), Technical Appraisal Department, Overseas Economic Cooperation Fund

Participation in international events (as speaker)

1992: Twenty-third Conference of the Underwater Mining Institute, Arlington, United States of America, "Polymetallic nodules exploration projects of Metal Mining Agency of Japan"

2007: Annual Meeting, International Lead and Zinc Study Group, Lisbon, "Supply and Demand of Lead and Zinc in Japan"

2008: Annual Copper Seminar, Chilean Copper Commission, Santiago, "Japan's Sustainable Metals Supply and the Role of Japan Oil, Gas and Metals National Corporation"

2010: International Seminar: New Trend Toward Responsible Mineral Resources Development, Ministry for Foreign Affairs of Japan, Tokyo, "Sustainable Supply Chain of Mineral Resources"

2010: Bicentennial Mining Week Copper Seminar, International Copper Study Group and Center for Copper and Mining Studies, Antofagasta, Chile, "Supply and Demand of Copper in Japan"

2014: Sensitization Seminar, International Seabed Authority, New York, "Japan's Work of Cobalt Rich Crusts Exploration and Technology Development"

2014: Forty-third Conference of the Underwater Mining Institute (poster), Lisbon, "Overview of Exploration Activities for Co-rich Fe/Mn Crusts in Japan's License Area"

International Seabed Authority ISBA/21/C/13

Council

Distr.: General
8 June 2015

Original: English

Twenty-first session
Kingston, Jamaica
13-24 July 2015

Addressing serious harm to the marine environment in the regulations for the exploitation of mineral resources in the Area

Submitted by the delegation of the Netherlands

I. Introduction

1. At its seventeenth session in July 2011, the Council of the International Seabed Authority requested the Secretariat to prepare a strategic workplan for the formulation of regulations for the exploitation of deep-sea minerals in the Area. The decision of the Council was in response to the statement submitted by the delegation of Fiji (ISBA/17/C/22).

2. Following the decision of the Council, the Secretariat prepared a strategic workplan for the formulation of regulations for the exploitation of polymetallic nodules in the Area (see ISBA/18/C/4) and submitted it at the eighteenth session, held in 2012.

3. Since consideration of the plan by the Council and its endorsement by a number of delegations, work on the development of regulations for the exploitation of mineral resources in the Area (exploitation regulations) has been ongoing in the Secretariat, the Legal and Technical Commission and in the Council.

II. Reason for submitting

4. The issues involved in the development of the exploitation regulations have proved to be highly complex. The technical study prepared for the Secretariat by a consultant contains a good overview of those issues.[1] The executive summary of the study states that, in complying with the request mentioned in paragraph 1, the

[1] Clark, A. et al., *Towards the Development of a Regulatory Framework for Polymetallic Nodule Exploitation in the Area* (International Seabed Authority Technical Study No. 11, Kingston, February 2013).

Please recycle

Authority faces the challenge of developing an exploitation framework that ensures that the exploitation of polymetallic nodules will: (a) benefit mankind as a whole, including future generations; and (b) foster commercially viable and sustainable exploitation, of the Area's mineral resources, including reasonable economic returns.

5. The study does not deal with the specifics of an environmental regime for the exploitation of polymetallic nodules. It does, however, specify key environmental components that will have to be developed and included in an overall exploitation framework. Furthermore, it is noted in the study that, if remediation is not practical or technologically possible, the logical alternative would be financial compensation for the environmental damage and the loss of ecosystem services from the seabed.

6. In the report of the Secretary-General containing the proposed workplan (ISBA/18/C/4), it is stated that, owing to the complexity of the issues involved in the development of the exploitation regulations:

> ... it will be necessary to provide the Legal and Technical Commission with relevant technical advice and information prior to its consideration of detailed draft regulations. Such advice and information would include information on fiscal regimes for comparable land-based mining; economic assessments of mineral production, including capitalization, operating costs, depreciation and amortization of mines; anticipated tonnages, grades and recovery efficiencies; and other financial and technical issues. Further work will also need to be carried out on the assessment of the potential environmental impacts of future mining.

7. In its report to the members of the Authority and all stakeholders entitled "Developing a Regulatory Framework for Mineral Exploitation in the Area", published in March 2015, the Legal and Technical Commission identified the restoration and rehabilitation of the marine environment as an issue to be addressed in the draft regulations on: (a) an environmental management plan; (b) environmental bonds and performance guarantees; and (c) the restoration and rehabilitation of the marine environment.

8. In view of the mandate of the Authority under section 1, paragraph 5 (k), of the annex to the 1994 Agreement relating to the Implementation of Part XI of the United Nations Convention on the Law of the Sea of 10 December 1982, which refers to "the timely elaboration of rules, regulations and procedures for exploitation, including those relating to the protection and preservation of the marine environment", and the role of the Council in adopting guidelines and directives for the exercise of functions by its organs, in this case the Legal and Technical Commission (see art. 163, para. 9, of the Convention), the delegation of the Netherlands submits the attached document on addressing serious harm to the marine environment in the regulations for the exploitation of mineral resources of the Area.

III. Objective

9. The objective of the annexed document is to further the incorporation of provisions into the exploitation regulations that address the serious harm to the marine environment and threats of such harm following an incident resulting from or caused by a contractor's activities in the Area.

10. In this regard, the delegation would like to note its objective to build upon the legal framework of Convention and the achievements of the Authority to date, including the three sets of regulations for the exploration of mineral resources of the Area (exploration regulations).

IV. Recommendations

11. The Council is invited to take into account the considerations above when considering the annexed document.

12. The Council is also invited to request the Legal and Technical Commission to consider recommending that:

(a) The exploitation regulations be based on the provisions on emergency orders in the exploration regulations in order to address threats of serious harm to the marine environment following an incident resulting from or caused by a contractor's activities in the Area;

(b) The exploitation regulations include an obligation requiring contractors to address serious harm to the marine environment by:

(i) Assessing the technical and economic feasibility of implementing restoration measures and;

(ii) Providing for restoration by equivalent, compensatory measures and/or the payment of monetary compensation if no adequate restoration measures have been or can be implemented;

(c) Private sector initiatives to address harm to the marine environment be supported and encouraged.

Annex

Addressing serious harm to the marine environment in the regulations for the exploitation of mineral resources in the Area

I. Introduction

1. Activities in the Area may cause injury to the interests of others, including those of private persons (legal and natural persons), States, international organizations and the international community as a whole. The damage may result from personal injury, property damage, economic loss or environmental loss, including damage to biological diversity. The present paper will focus on environmental loss.

2. Activities in the Area will have an impact on the marine environment. The impacts will have to be identified and described in an environmental impact assessment. Activities in the Area may also create a risk of such impacts. Pursuant to the United Nations Convention on the Law of the Sea of 10 December 1982, the Council of the International Seabed Authority shall disapprove areas for exploitation in cases where substantial evidence indicates the risk of serious harm to the marine environment (art. 162.2 (x)). Risks should be identified and quantified in an environmental impact assessment. It will be for the Council to decide whether the identified impacts and risks are acceptable when approving a plan of work for a particular activity and to prescribe measures to manage such risks.

3. The quality of an environmental impact assessment depends on available science and, hence, such an assessment may not identify all impacts and risks, or not quantify risks with full accuracy.

4. The generally accepted rule in domestic jurisdictions is that damage lies where it falls, unless it originates with the wrongful conduct of a person, such as a contractor (fault-based civil liability). A framework is necessary to determine whether and to what extent damage resulting from activities in the Area should lie where it falls and not be redressed, or be incurred by an entity involved in activities in the Area.

5. Special rules have been developed for a number of activities that are considered to create a significant risk of damage, including rules at the international level for oil pollution damage and nuclear damage. Pursuant to such rules, the standard of civil liability is strict (i.e. not based on fault), no or few exoneration or mitigation defences may be invoked and liability is limited with regard to amount and time. In addition, such special rules may provide for additional mechanisms to provide redress, e.g. a fund financed by industry, residual State liability and/or a fund financed by States.

6. The traditional civil liability approach is not suitable for addressing environmental loss because it presumes the existence of a natural or legal person (victim) that can present a claim for the damage suffered. With respect to environmental loss, civil law remedies can address such loss if a person is permitted: (a) to recover the costs of measures taken by the person to respond to the loss or a threat of such loss; or (b) to claim compensation or injunctive relief in

connection with the loss. However, civil liability does not impose an obligation on the polluter to take response measures. Furthermore, civil liability is a core element of domestic law, rules and procedures diverge between States and attempts to harmonize civil liability laws have not been very successful. With respect to areas beyond the limits of national jurisdiction, civil law remedies can only address environmental loss if an international normative framework is established that permits a person: (a) to take response measures and recover the costs; or (b) to claim compensation or injunctive relief on behalf of the international community.

II. Addressing environmental loss

7. In the event of environmental loss or a threat of such loss, the primary objective should be prevention and restoration rather than monetary compensation. To address the threat of environmental loss following an incident, the focus should be on the prevention of loss. To redress environmental loss, the focus should be on the restoration of loss. This could be achieved by requiring the implementation of response measures. Such response measures should aim:

(a) To prevent, minimize and contain environmental loss in the event of an imminent threat of environmental loss;

(b) To restore the environment to the condition that existed before the loss occurred in the event of environmental loss.

8. There are several internationally agreed precedents for this alternative approach to addressing environmental loss, including:

(a) The Mining Code, specifically regulation 33 of the Regulations on Prospecting and Exploration for Polymetallic Nodules in the Area (ISBA/6/A/18, annex), regulation 35 of the Regulations on Prospecting and Exploration for Polymetallic Sulphides in the Area (ISBA/16/A/12/Rev.1, annex) and regulation 35 of the Regulations on Prospecting and Exploration for Cobalt-rich Ferromanganese Crusts in the Area (ISBA/18/A/11, annex), requires the implementation of response measures to prevent serious harm to the marine environment in the event of an emergency;

(b) With regard to environmental emergencies in the Antarctic Treaty area, annex VI to the Protocol on Environmental Protection to the Antarctic Treaty on liability arising from environmental emergencies (Measure 1 (2005)) requires the implementation of response measures to prevent environmental loss in the event of an environmental emergency; and

(c) With regard to damage caused by living modified organisms, the 2010 Nagoya — Kuala Lumpur Supplementary Protocol on Liability and Redress to the Cartagena Protocol on Biosafety requires the implementation of response measures to avoid damage to biological diversity or to restore such damage.

9. Pursuant to the instruments referred to in paragraph 8, the obligation to implement response measures does not apply to all environmental loss. The loss must result in an adverse effect on the environment that is measurable or otherwise observable and surpasses a certain threshold. The threshold is usually defined using qualitative terms such as "significant" or "serious". With respect to activities in the Area, the threshold for the issuance of emergency orders to prevent environmental

loss is contingent on "serious harm to the marine environment" (see art. 162.2 (w) of the Convention and the regulations of the Mining Code referred to in para. 8). In addition, it will have to be established whether the loss can be restored through natural remediation within a reasonable time (passive rehabilitation).

10. The implementation of response measures may not always be technically feasible or economically reasonable. In the event of environmental loss in the Area, this is the more likely scenario for the implementation of restoration measures. The question arises whether the damage should lie where it falls or whether an obligation should be introduced to address the environmental loss by alternative measures. Such alternative measures could be in the form of restoration by equivalent, compensatory measures or monetary compensation, as described below.

(a) Restoration by equivalent could be achieved by the replacement of the damaged environmental components with equivalent components for the same or another type of use, either at the same or an alternative location. If restoration by equivalent in the Area is not technically feasible or economically reasonable, restoration measures could be implemented outside the Area, e.g. in coastal zones with a non-favourable conservation status. Such measures could, for example, aim at the restoration of damaged coral reefs or mangrove forests. The Nagoya — Kuala Lumpur Supplementary Protocol provides a precedent for restoration by equivalent (see art. 2.2 (d) (ii) b);

(b) The implementation of compensatory measures could consist of the designation of a zone in the Area in which activities would be prohibited. A damaged area would thus be offset by a preserved area that otherwise would have been mined. Such measures would result in a quantifiable loss of income for the International Seabed Authority, for which the Authority should be compensated;

(c) The payment of monetary compensation could be required to indicate that the causation of environmental loss would not be without consequences. The level of payment could be based on the costs of equivalent restoration measures. Annex VI to the Protocol on Environmental Protection to the Antarctic Treaty provides a precedent for monetary compensation as an alternative for the implementation of response measures (see art. 6.2 (b)).

11. In addition to an intergovernmental regulatory framework, environmental loss may be addressed through private sector instruments (self-regulation). Examples include the Compact: A Contractual Mechanism for Response in the Event of Damage to Biological Diversity Caused by the Release of a Living Modified Organism and the Offshore Pollution Liability Agreement in connection with offshore exploration for or production of oil and gas. In the context of deep seabed mining, the International Marine Minerals Society provides a platform for additional work and the voluntary Code for Environmental Management of Marine Mining, which contains provisions on rehabilitation and compensation, could be the basis for such additional work.

III. Current legal framework

12. The current legal framework, including the Convention, the 1994 Agreement relating to the Implementation of Part XI of the Convention and the Mining Code, contains rules on liability for damage. The International Tribunal for the Law of the

Sea has clarified the current legal framework in its advisory opinion of 1 February 2011 on responsibilities and obligations of States sponsoring persons and entities with respect to activities in the Area.

(a) Liability of States and international organizations

(i) Pursuant to article 139 of the Convention, a State or an international organization may be liable for damage caused by its failure to carry out its responsibilities under Part XI. In its advisory opinion, the Tribunal clarified that the obligation to carry out responsibilities under Part XI was an obligation of conduct and a due diligence obligation (para. 111). Hence, if a State or an international organization has exercised the required degree of due diligence (with respect to the contractors it sponsors), it would not be liable for any damage caused.

(ii) Pursuant to article 235 of the Convention, States are responsible for the fulfilment of their international obligations concerning the protection and preservation of the marine environment and shall be liable in accordance with international law. Under international law, an internationally wrongful act entails a State's liability. The customary international obligation of a State to prevent those activities within its jurisdiction or control that cause transboundary harm is generally considered to be an obligation of conduct and of due diligence. To exercise the required degree of diligence, States must ensure that recourse is available for prompt and adequate compensation or other relief with respect to damage caused by pollution of the marine environment by natural or juridical persons under their jurisdiction (art. 235.2).

(b) Liability of contractors

Pursuant to article 22 of annex III of the Convention, the contractor is liable for any damage arising out of wrongful acts in the conduct of its operations. This provision is reaffirmed in the regulations on nodules (regulation 30 and section 16 of annex IV), sulphides (regulation 32 and section 16 of annex 4) and crusts (regulation 32 and section 16 of annex IV).

(c) Liability of the Authority

Pursuant to article 22 of Annex III of the Convention, the Authority is liable for any damage arising out of wrongful acts in the exercise of its powers and functions. This provision is reaffirmed in the regulations on nodules (regulation 30 and section 16 of annex IV), sulphides (regulation 32 and section 16 of annex 4) and crusts (regulation 32 and Section 16 of annex IV).

IV. Gap analysis

13. In its advisory opinion of February 2011, the Tribunal observed that a gap in liability might occur if, notwithstanding the fact that the sponsoring State had taken all necessary and appropriate measures, the sponsored contractor had caused damage and was unable to meet its liability in full (para. 203). It was also pointed out that a gap in liability might occur if the sponsoring State failed to meet its obligations, but that failure was not causally linked to the damage (para. 203). The

Tribunal suggested that the Authority consider the establishment of a trust fund to compensate for the damage not covered (para. 205).

14. It therefore merits consideration whether and how damage in such situations should be redressed, in particular in the event of environmental loss. With regard to traditional damage (personal injury, property damage or economic loss), the current legal framework may be considered satisfactory. If activities in the Area are considered to create a risk of serious harm to the marine environment, consideration should be given to the introduction of special civil liability rules (see para. 5). With regard to environmental loss, the current legal framework may not be considered satisfactory. In particular, serious harm to the marine environment may not be addressed if the contractor is not liable or cannot meet its liability in full. Accordingly, there would be merit in addressing this issue in the exploitation regulations.

V. Options to address serious harm or a threat of serious harm to the marine environment

15. To address a threat of serious harm to the marine environment following an incident resulting from or caused by a contractor's activities in the Area, it is recommended to base the exploitation regulations on the provisions on emergency orders in the exploration regulations (see para. 8).

16. To address serious harm to the marine environment, it is recommended to consider the introduction of an obligation in the exploitation regulations requiring contractors:

(a) To assess the technical and economic feasibility of implementing restoration measures;

(b) To provide for restoration by equivalent, compensatory measures and/or the payment of monetary compensation if no adequate restoration measures have been or can be implemented (see para. 10).

17. It is also recommended to support and encourage private sector initiatives to address harm to the marine environment (see para. 11).